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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,260

04/05/2005

Hermann Maier

18678

4702

23389

7590

03/27/2008

SCULLY SCOTT MURPHY & PRESSER, PC

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EXAMINER

LOPEZ, FRANK D

ART UNIT

PAPER NUMBER

3745

MAIL DATE

DELIVERY MODE

03/27/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/530,260

**Applicant(s)**

MAIER ET AL.

**Examiner**

F. Daniel Lopez

**Art Unit**

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on January 2, 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

***Response to Amendment***

Applicant's arguments filed January 2, 2008, have been fully considered but they are not deemed to be persuasive.

Applicant's arguments with respect to claim 9 has been considered but are deemed to be moot in view of the new grounds of rejection. The new grounds of rejection are necessitated by changing the limitation of claim 9 from a taper to an angle.

Applicant argues that the annular channel 101 being at an angle with the valve piston is supported by the specification on page 16 line 6-22 and the drawings, specifically fig 5. This portion of the specification describes the annular chamber, but nowhere indicates that it is at an angle with the valve piston and neither does the drawings.

Applicant argues that the counterpressure line connects the pressure chamber 45 to the first pressure line 38; whereas Dantlgraber incorporates a restriction in a bore and tolerates a limited flow from a conduit through a passage to a chamber. Applicant states that the difference between the instant invention and Dantlgraber, is that the counterpressure line avoids any fluid flowing into the pressure chamber 45, but Dantlgraber does not have any provision for preventing this. Furthermore, the restriction of Dantlgraber can present problems of clogging.

The examiner disagrees with some of these arguments and is confused by others. The claims do not claim details of the counterpressure line, either having or not having any restriction, and therefore the existence of the restriction of Dantlgraber has no impact on the rejection. It would appear that the whole purpose of the counterpressure line (44, fig 1; 87, fig 2) is to allow flow into the pressure chamber 45, and therefore applicant's argument is wrong. Furthermore, the counterpressure lines of the instant invention and Dantlgraber are both situated in the piston, and therefore the counterpressure line does not appear to be the difference in allowable subject matter.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

Claim 9 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9 line 1-2 "the annular channel extends at an angle towards the valve piston" is confusing. Claim 9 depends from claim 8, which indicates that the annular channel is the pressure chamber. The specification indicates that the pressure channel is elements 101 with 53 (e.g. page 16 line 11-13). This annular channel is not at an angle with the valve piston.

***Claim Rejections - 35 USC § 102***

Claims 1-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Dantigraber. Dantigraber discloses a volumetric flow control apparatus for a hydraulic pump (1), which delivers fluid into a working line (1a) and has an adjusting device (9, 10) for adjusting a displacement of the pump, based on an actuating pressure controlled by a control valve (18); the control valve has first and second pressures loading opposed first and second measuring surfaces (4a, 4b, respectively), respectively, by respective first and second lines (20, 23, respectively); wherein the first pressure is higher than the second pressure; and an annular pressure chamber (18a) is formed between the first and second measuring surfaces, with a leakage flow path between the pressure chamber and the second measuring surface and a counter pressure line (4c, 4d) connected between the pressure chamber and the first line; wherein the first and second lines are connected to the working line and downstream of a throttle (2) in the working line, respectively. A sealing portion (between 4b and 18a) of the valve piston (4) has no seal and must allow the valve to move back and forth, and therefore must have some leakage between it and the surrounding wall.

**Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:00 AM -4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

/F. Daniel Lopez/

F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
March 28, 2008